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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,689	04/14/2004	Arthur D. Ballard	60305-USA	8065
7590		07/10/2007		
Paul A. Fair				
Patent Administration				
FMC Corporation				
1735 Market street				
Philadelphia, PA 19103				
			EXAMINER	
			HAIDER, SAIRA BANO	
			ART UNIT	PAPER NUMBER
			1711	
			MAIL DATE	DELIVERY MODE
			07/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/824,689

Applicant(s)

BALLARD ET AL.

Examiner

Saira Haider

Art Unit

1711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 6/12/2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 6/12/2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants have argued that Gennadios does not disclose step (ii) of claims 1 and 21. In support of their argument applicants have stated that a conventional gelatin encapsulation machine is not a mixer, pump, or devolatilizer. The examiner notes that Gennadios discloses that the composition is transferred into a conventional gelatin encapsulation machine. Thus, upon transfer of the molten composition there is inherently some level of mixing occurring. Further, Gennadios discloses that the films are formed via casting the solution on drums. It is clear that upon film formation the volatiles are removed, thus, some level of devolatilization occurs. Thus, the reference meets the claimed limitations and the examiner maintains the 102(b) rejection.

Applicants have argued that the composition of Gennadios is not a highly viscous homogeneous molten composition (as per claims 47 and 49). In support of their argument applicants have stated that there is nothing in Gennadios to suggest applying a minor amount of heat such that the very viscous mass does not thin out, further applicants have cited the disclosure provided at col. 6, lines 1-4. The examiner notes that at col. 5, lines 55-56, the reference discloses that the composition is heated, preferably with stirring to above 130 F, preferably above 135, more preferably above 160. The temperatures are preferred embodiments, provided to merely guide. Subsequently, it is clear that Gennadios would envisage heating the composition to temperatures slightly above room temperature. Thus, resulting in the highly viscous homogeneous molten composition.

Applicants have argued the 103 rejection of claims 17 and 37, applicants have argued that there is no disclosure or suggestion to heat the working composition at pressures above atmospheric pressure. Modification of the pressure of a system is well known in the art, wherein the basic phase changes of a system are known to be affected by pressure. It is not necessary that the reference disclose or suggest this modification, since one skilled in the art would have readily manipulated and determined the optimum or workable ranges.

Applicants have argued that Gennadios and Thanoo are non-analogous art. Applicants have argued that the problem Thanoo solves by using the Ross Mixer (foaming) is not a stated problem in Gennadios. It is not necessary that the motivation for utilizing the Ross Mixer in the Thanoo invention be the same motivation to utilize the Ross Mixer in the Gennadios invention. The examiner cites the section of Thanoo in the Office Action which states that non-static mixers (such as Ross Mixers) are advantageous because one can control the mixing intensity independently of the flow rates of the feed streams into the device. Thus, one would look to the Thanoo reference in order to control the mixing in the Gennadios reference.



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